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MA-3319-2013

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE HIMANSHU JOSHI

ON THE 1st OF SEPTEMBER, 2025

MISC. APPEAL No. 3319 of 2013

MUKESH GAKKHAR AND OTHERS

Versus

LAXMINARAYAN SAHU AND OTHERS

.....
Appearance:

Shri Prakash Gupta - Advocate for the appellants.

None for respondent No.1.

*Shri Sanjay Kumar Agrawal - Senior Advocate With Shri Manish Rajak -
Advocate for respondent No.2/ Nagar Nigam.*

Shri Vineet Kumar Pandey - Advocate for respondent No.3.

.....
WITH

MISC. APPEAL No. 3320 of 2013

MUKESH GAKKHAR

Versus

LAXMINARAYAN SAHU AND OTHERS

.....
Appearance:

Shri Prakash Gupta - Advocate for the appellants.

None for respondent No.1.

*Shri Sanjay Kumar Agrawal - Senior Advocate With Shri Manish Rajak -
Advocate for respondent No.2/ Nagar Nigam.*

Shri Vineet Kumar Pandey - Advocate for respondent No.3.

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MISC. APPEAL No. 3472 of 2013

THE ORIENTAL INSURANCE COMPANY LTD.

Versus

MUKKESH GAKKHAR AND OTHERS
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**Appearance:**

Shri Vineet Kumar Pandey - Advocate for the appellant.

Shri Prakash Gupta - Advocate for respondents No.1, 2 and 3.

None for respondent No.4.

Shri Sanjay Kumar Agrawal - Senior Advocate With Shri Manish Rajak - Advocate for respondent No.5/ Nagar Nigam.

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MISC. APPEAL No. 3475 of 2013

THR ORIENTAL INSURANCE COMPANY LIMITED

Versus

MUKKESH GAKKHAR AND OTHERS

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Appearance:

Shri Vineet Kumar Pandey - Advocate for the appellant.

Shri Prakash Gupta - Advocate for respondent No.1.

None for respondent No.2.

Shri Sanjay Kumar Agrawal - Senior Advocate With Shri Manish Rajak - Advocate for respondent No.3/ Nagar Nigam.

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ORDER

Since the issue involved and award impugned in all these four appeals is common, therefore, these appeals are being decided by this common order.

2. These four appeals have been filed challenging the common award dated 31.07.2013 passed by the VIth Additional Motor Accident Claims Tribunal, Bhopal, in MCC Nos.2659 and 2660 of 2010 whereby the learned Tribunal has awarded compensation to the tune of Rs.40,51,840/- to the claimants in respect of death of Vinita Gakkhar and compensation of Rs.55,700/- in respect of injury sustained by claimant-Mukesh Gakkhar.

3. M.A. Nos.3319 and 3320 of 2013 have been preferred by the claimants seeking enhancement of compensation whereas other two appeals bearing M.A. Nos.3472 and 3475 of 2013 have been filed by the insurance company upon whom the liability to pay compensation has been fixed by the Tribunal, and by way of filing the appeals, the insurance company is praying for setting aside the impugned award.

4. Facts of the case in brief are that on 12.07.2010, when in the evening, the claimant-Mukesh Gakkhar along with his wife Vinita Gakkhar (deceased) was going on motorbike



bearing registration No.MP-05-MF-0540 and in the midway, they have been dashed by a Tanker bearing registration No.MP-02-7079 registered in the name of respondent/Nagar Nigam, Bhopal, which resulted into death of Vinita Gakkhar and serious injuries to the claimant-Mukesh Gakkhar.

Argument of appellant's counsel in M.A. No.3319 of 2013 (Death Claim Case)-

5. Learned counsel for the appellant has submitted that the learned Claims Tribunal has not decided the case in proper perspective and ignored the basic legal principle for awarding the just compensation. The learned Claims Tribunal has committed grave error while applying the multiplier of 11 instead of 13. He has further submitted that the Tribunal did not award any compensation under the head of 'consortium' and the amount of compensation awarded under the heads of 'Loss of Estate' and 'Funeral Expenses' are also not adequate in the light of landmark judgments passed by the Hon'ble Supreme Court time and again in respect of Motor Accident Claim Cases. In support of his contentions, he has relied upon the following pronouncements passed by the Hon'ble Supreme Court as well as High Court-

1. **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and Others** reported in (2018) 18 SCC 130;
2. **Maya Singh and Others Vs. Oriental Insurance Company Ltd. and Others** reported in 2025 SCC OnLine SC 266;
3. **National Insurance Company Limited Vs. Birender and others** reported in (2020) 11 SCC 356;
4. **Sri Malakappa & Ors.** passed in **Special Leave Petition (C) No. 27391 of 2018**;
5. **New India Assurance Company Limited Vs. Dolly Satish Gandhi & Another** reported in 2025 SCC OnLine Bom 752.

Arguments of appellant's counsel in M.A. No.3320 of 2013 (Injury Case)-

6. Learned counsel for the appellant has submitted that looking to injuries sustained by the claimant and impact thereof on his daily routine, the amount awarded by the learned



Tribunal is inadequate. The learned Claims Tribunal has totally ignored the fact that the appellant was insured with “Medi-claim policy” and had paid the “premium” regularly thereunder and was legally entitled for the claim in accordance with the term of the policy and the said benefit could not be adjusted by the learned Claims Tribunal against the compensation awarded under the Motor Vehicles Act. The adjustment done by the Tribunal is erroneous for the reason that the claim under the accident has no nexus with the “Medi-claim policy” and the accident falls under the liability of tort. The learned Tribunal has wrongly ignored the physical disability certificate issued by the registered doctor. The learned Tribunal also did not award any compensation towards the leave period of three months which appellant had to take during treatment. It has further been argued that the income of claimant/injured is also not properly assessed by the Tribunal as he was a NCC coach getting extra salary thereunder and after the accident, he was removed from the said post on account of physical disability. With the aforesaid, the learned counsel for the appellant has prayed for enhancement of compensation amount.

Arguments on behalf of Insurance company (for both Death Claim Case as well as Injury Case) -

7. Learned counsel for the insurance company has submitted that the Company has preferred two appeals being aggrieved with the award passed by the learned Tribunal on account of death of Vinita Gakkhar and injury sustained by the claimant-Mukesh Gakkhar. He has argued that it is evident from the service record of deceased that at the time of accident, she was 47 years old and thus, in the light of judgment passed in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi {2017 (16) SCC 680}**, the addition towards the future prospects should have been 30% when the age of deceased was between 40 to 50 years but the learned Tribunal has applied addition of 50% which is incorrect and interferable by this Court.

8. In respect of injury case, the counsel for the insurance company has argued that the learned Tribunal has awarded just and proper compensation, rather on the higher side. The findings given by the Tribunal in respect of dis-entitlement of compensation towards medical expenses being reimbursed through medi-claim policy is completely in accordance with the law as the claimant could not get double benefit for the same treatment and expenses thereunder. He has submitted that the claimant, by adducing any cogent evidence, had failed to prove that at the time of accident, he was holding the post of NCC coach and getting extra



salary for the same. Looking to the injury sustained by the claimant, the compensation awarded by the learned Tribunal is adequate and requires no interference by this Court.

Arguments on behalf of the Nagar Nigam, Bhopal -

9. Learned Senior Counsel for the Respondent/Nagar Nigam Bhopal, has stated that the offending vehicle was registered in the name of Nagar Nigam, Bhopal and since the counsel for the insurance company does not want to press the appeal on the ground of breach of terms and condition of policy, he does not want to argue further as liability to pay compensation has been fixed upon the insurance company.

10. Heard all the parties and perused the record.

11. The facts which are undisputed by the parties in these appeals are as under :-

- i. The accident took place on account of collision between the motorbike bearing registration No.MP-05-MF-0540 and Tanker bearing registration No.MP-02-7079 resulting into death of Vinita Gakkhar and injuries to claimant-Mukesh Gakkhar
- ii. The offending vehicle was registered in the name of Nagar Nigam, Bhopal, and insured with Oriental Insurance Company Ltd.
- iii. The claimant-Mukesh Gakkhar (injured) is the husband of deceased whereas other claimants-Shobhit and Shreya, are the son and daughter of deceased, respectively.
- iv. At the time of accident, the deceased and injured both were working as lecturers and deceased was getting salary of Rs.30,620/ per month.

12. The claimants as well as insurance company both have argued the appeals on the point of quantum, hence, this Court is embarking upon to examine the evidence adduced by the parties before the learned Tribunal -

Analysis of this Court in respect of Death Claim Case -

13. On perusal of the impugned award as well as record, as noted above, it is evident and undisputed herein that the deceased was working as government servant being lecturer



and her income was Rs.30,620/-. As per service record of the deceased, her date of birth was 27.12.1963 and thus, she had attained the age of 47 years at the time of accident. Taking into account the age and income of the deceased, the learned Tribunal calculated the compensation as under :-

Heads	Amount (in rupees)
Loss of Dependency Rs. 30,620 (Monthly Income) + 50% (future prospects) i.e. 15,310/- = 45,930/- x 12 months = 5,51,160/-pa - deduction of 1/3 towards personal expenses i.e. Rs. 1,83,720 = 3,67,440 x 11 (multiplier) = 40,41,840/-	40,41,840/-
Funeral Expenses	5,000/-
Loss of Estate	5,000/-
Total Compensation	40,51,840/-

14. This Court feels agreement with the income of deceased as assessed by the learned Tribunal i.e. Rs.30,620/- per month which would be Rs.3,67,440/- per annum. In the light of the judgment passed in the case of **Pranay Sethi (supra)**, the deceased was considered as a Government Employee having permanent job and thus, an addition of 30% i.e. Rs.1,10,232/- of the established income is warranted where the deceased was between the age of 40 to 50 years which was wrongly applied by the learned Tribunal as 50% and hence, the amount comes to Rs.3,67,440 + 1,10,232 = 4,77,672/-. Further, in the light of another landmark Judgment of Hon'ble Supreme Court passed in the case of **Sarla Verma Vs. Delhi Transport Corporation** reported in (2009) 6 SCC 121, after applying deduction of 1/3 i.e. Rs.1,59,224/- towards personal expenses, the amount would come to Rs.3,18,448/-.

15. Also, in respect of applying the multiplier, in the light of the legal principles as laid-down in the case of **Sarla Verma (Supra)**, for the age group of 46 to 50, the multiplier of 13 can be applied whereas the learned Tribunal has wrongly applied the multiplier of 11 and therefore, multiplier of 13 in place of 11 has to be applied, as such, the amount comes to Rs.3,18,448 x 13 = Rs.41,39,824/-

16. Further, this Court also does not feel agreement with the awarded amount by learned Tribunal Rs.5000/- each towards 'Funeral Expenses' and 'Loss of Estate', which would be Rs.18,150/- under each count in the light of judgment passed by Hon'ble Supreme Court in the case of **Pranay Sethi (Supra)** after applying the principle of increasing 10% as



inflationary adjustment in every three years. Each Claimant is also entitled to the get an amount to the tune of Rs.48,400/- under the head of 'consortium'. Therefore, this Court directs to reassess the compensation in respect of death claim as under :-

Head	Amount (in rupees)
Loss of Dependency - Income of deceased - Rs. 30,620 per month + 30% (future prospects) i.e. 9,186/- = 39,806/- Yearly Income - Rs. 39,806 x 12 months = 4,77,672/-Per Annum Deduction of 1/3 towards personal expenses i.e. Rs. 1,10,232 - Rs. 4,77,672 - 1,10,232 = 3,18,448/- Multiplier of 13 - 3,18,448 x 13 = 41,39,824/-	41,39,824/-
Funeral Expenses	18,150/-
Loss of Estate	18,150/-
Loss of Consortium (48,400 x 3)	1,45,200/-
Total Compensation	43,21,324/-

17. The amount shall also carry 6% interest from the date of filing the claim petition till realization.

Analysis of this Court in respect of Injury Case -

18. It is undisputed that the claimant/injured-Mukesh Gakkhar sustained injuries in the accident occurred on 12.07.2010. The learned Tribunal has awarded compensation of Rs.55,700/- in the following manner :

Heads	Amount (in rupees)
Medical Expenses and Transportation Charges	25,700/-
Pain and Suffering	30,000/-
Total Compensation	55,700/-

19. The claimant-Mukesh Gakkhar has filed the appeal (M.A. No.3320 of 2013) seeking enhancement mainly on the ground of loss of income on account of permanent disability caused to him in the accident and adjustment of medical expenses which got reimbursed by him through his medi-claim policy.



20. On perusal of the impugned award, it is found that the learned Tribunal has denied to compensate the claimant towards his medical expenses to the extent of Rs.47,185/- which was reimbursed by him through his medi-claim policy. By relying upon the pronouncement passed by the High Court of Bombay in the case of **Dolly Satish Gandhi (supra)**, the learned counsel for the appellant has argued that the adjustment done by the Tribunal is erroneous for the reason that the claim under the accident has no nexus with the “medi-claim policy” and the accident falls under the liability of tort.

21. It has been settled that the claimant has received reimbursement from his personal medi-claim insurance, which does not absolve the tortfeasor/wrongdoer or insurer of the offending vehicle from their liability to pay the compensation and therefore, it is held that the medi-claim policies are contractual agreements between the insured and their insurer, entirely independent from the tortious liability arising from a motor accident. The tortfeasor cannot take advantage of the benevolence or foresight of the victim in taking an insurance policy for his own protection and thus, in a death or injury case, as the case may be, under the Motor Vehicles Act, no deduction can be made from the compensation amount on account of medical expenses reimbursed to the claimant under a health insurance or medi-claim policy. The reimbursement under health insurance is not a bar to claim medical expenses as part of the compensation under the Act and the tortfeasor or their insurer is liable to pay full compensation.

22. In the case at hand, the claimant had produced the medical bills total amounting to Rs.66,081/-, out of which, the learned Tribunal has allowed the compensation of Rs.12,000/- only. In view of the above discussion, this Court deems it appropriate to award remaining amount i.e. Rs.47,185/- (adjusted by the Tribunal) towards medical expenses in addition to the amount awarded by the learned Tribunal.

23. So far as amount awarded by the Tribunal in respect of 'pain and sufferings' is concerned, the Tribunal has awarded Rs.30,000/-. The learned counsel for the appellant has argued that the learned Tribunal did not consider the aspect that the claimant has sustained permanent disability on account of fracture in various parts of body and remained hospitalized for the period from 12.07.2010 to 23.07.2010 and thereafter, again from 24.07.2010 to 28.07.2010 at Narmada Hospital, Bhopal.

24. On perusal of the impugned award, the learned Tribunal has noted that the claimant



sustained fracture in his right acetabulum and inferior and superior ramus and in ribs. The claimant has also examined the doctor, namely, H.G. Kalyani (PW-3) in support of his claim. Undisputably, the claimant remained hospitalized for the period from 12.07.2010 to 23.07.2010 and thereafter, again from 24.07.2010 to 28.07.2010. Taking into account the nature of injuries, duration and intensity of pain, hospitalization period and the long-term effects on the claimant's lifestyle, I find that an appropriate award for 'pain and suffering' in this case is Rs. 1,00,000/-, towards pain and suffering in place of Rs.30,000/-.

25. The record indicates that the claimant has failed to prove his permanent disability on account of accident, however, the record shows that the claimant was holding the post of N.C.C. coach and this Court has no doubt that the injury sustained by the claimant would have been a reason for losing the said position. Further, the Tribunal itself has observed that for the period of treatment, the claimant would have been remained on leave. However, the claimant has failed to prove that any loss of income for the aforesaid period was caused to him, but it is settled principle under the Motor Vehicle Accident Claims that the amount can be given towards the loss of income on account of leave taken during the hospitalization period and thus, the claimant is entitled to be compensated under the head of loss of income for the period of his hospitalization as he had spent his leave and this Court deems it appropriate to award Rs.50,000/- towards 'loss of income' on account of leaves taken and losing the position of N.C.C. coach.

26. The claimant is also entitled to get Rs.15,000/- towards 'special diet', Rs.15,000/- towards 'attendant charges' and Rs.15,000/- towards 'transportation'.

27. Accordingly, this Court sums up its findings awarding compensation to the claimant as under:-

Head	Amount (in Rupees)
Medical Expenses	66,081/-
Pain and Sufferings	1,00,000/-
Loss of Income (for the period of leave) and losing position of N.C.C. coach	50,000/-
Special Diet	15,000/-
Attendant Charges	15,000/-
Transportation Charges	15,000/-
Total Compensation	2,61,081/-



28. The aforesaid amount shall carry interest @ 6% per annum from the date of filing the claim petition till realization.

29. Thus, the difference in compensation amount are as under:-

In Death Claim Case-

Amount awarded by MACT (in Rupees)	Amount awarded by this Court after enhancement (in Rupees)
40,51,840/-	43,21,324/-

In Injury Case-

Amount awarded by MACT (in Rupees)	Amount awarded by this Court after enhancement (in Rupees)
55,700/-	2,61,081/-

30. Resultantly, all the four appeals are hereby disposed of subject to following conditions:-

- i. The Insurance Company is directed to deposit the compensation amount within a period of 60 days from the date of this order, failing which, the execution can be initiated against it.
- ii. The claimants are directed to pay the requisite court-fee, if required, in the present case. Office is also directed to verify as to whether any court-fee is payable for the enhanced compensation amount.
- iii. On such deposit, the claimants in the case bearing M.A. No.3319 of 2013 would be permitted to withdraw the amount by filing a proper application before the Tribunal as under:-
 - a. Claimant-Mukesh Gakkhar - Rs.13,21,324/- + accrued interest;
 - b. Claimant-Shobhit Gakkhar - Rs.15,00,000/- + accrued interest;
 - c. Claimant-Shreya Gakkhar - Rs.15,00,000/- + accrued interest.
- iv. In case bearing M.A. No.3320 of 2013, the claimant-Mukesh Gakkhar, would be permitted to withdraw the entire amount as deposited, by filing a proper application before the Tribunal.
- v. The impugned award of the learned Tribunal stands modified to the above extent and with terms and directions as stated above.



vi. The record be sent back to the learned Tribunal within a period of three weeks from the date of this order.

vii. As a sequel, interlocutory applications, if any, pending consideration, shall also stand closed.

(HIMANSHU JOSHI)
JUDGE

Prachi